

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON DC 20554

In the Matter of

1998 Biennial Regulatory Review-
Review of the Commission's
Broadcast Ownership Rules
Pursuant to Section 202 of the
Telecommunications Act of 1996

Newspaper/Radio Cross-Ownership
Waiver Policy

To: The Commission

MM DOCKET NO. 98-35

MM DOCKET NO. 96-197

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STATEMENT IN SUPPORT OF
EMERGENCY PETITION FOR RELIEF OF
THE NEWSPAPER ASSOCIATION OF AMERICA

El Día, Inc., the owners and publisher of the daily newspaper "El Nuevo Día", which is distributed throughout Puerto Rico¹ urges, the Commission to grant the above-referenced petition for the reasons stated therein, as well as the reasons set forth below:

1. The Commission, on August 6, 1999, released a Report and Order in MM Docket No. 91-221 and MM Docket No. 87-8 in which is adopted new rules involving duopolies and cross ownership, as well as local marketing agreements. These new rules substantially change both the philosophy and the import of what had been previously

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"El Día" is in competition with "El Vocero de Puerto Rico", "The San Juan Star", "El Mundo" and "Primera Hora" which are also distributed throughout Puerto Rico, as well as a number of other news papers.

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prohibited under Rules 73.3555(b) and 73.3555(c). These changes were the product of a maturation of Commission thinking over the past 24 years since the adoption of the Second Report and Order in Docket No. 18110 released January 31, 1975 (50FCC 2nd 1046). Unfortunately, this action did not apply the same intelligent analysis to Rule 73.3555(d) prohibiting cross ownership of broadcast facilities with daily newspapers in the same general market. There is no explanation as to why newspaper cross ownership was ignored, nor is there any recognition that by its action the Commission is effectively precluding the acquisitions of broadcast properties by local newspapers in the same general market or service area. That the Commission may change its rules at some date in the future to allow such cross ownership provides little solace to this daily newspapers because it will be a classic example of too little and too late.

2. The Commission does recognize that there is a new and highly competitive ball game in communication markets with the presence of multiple methods of communication, as well as sources of news and information provided by cable systems, direct broadcast satellites, the Internet, in addition to television which will soon be substantially enhanced through digital TV. Newspapers are no longer the "bad guy", if they ever were. Indeed, the Commission has not found that newspapers which owned broadcast properties prior to the adoption of the Second Report and Order (supra) abused their trust as licensees of the FCC. In many cases, had it not been for the desire of local newspapers to provide further and better service to the public, many radio and television stations would not have been built as soon as they were.

3. The absence of any positive efforts on the part of the Commission with

respect to newspaper cross ownership is inexplicable and especially so given the actions it has taken with respect to duopolies and cross ownerships by broadcast licensees. The end result of the Commission's inaction is to place newspapers in a vastly inferior position given to that of other competing communications media in a market where a non-newspaper organization can own up to two television stations and six broadcast stations depending on the amount of other broadcast media in the market. Yet there is nothing in the history of newspapers ownership of broadcast properties that requires, or even suggests, that newspapers should continue to be prohibited from owning broadcast stations in those markets where the particular newspaper is published and distributed. If there was ever any rationale for the prohibition of ownership of broadcast properties by local newspapers, it certainly no longer exists. The record is barren of any reason to continue the prohibition and it is manifestly unfair for the Commission to relax the duopoly and cross ownership rules with respect to broadcast licensees but to continue to prohibit newspapers from entering the same arena. Indeed, ownership of a broadcast property by a daily newspaper would greatly enhance the news gathering and information transmissions of such broadcast stations.

4. If there was any concern about whether a newspaper-owned broadcast facility would threaten competition for local advertising in the market, the constantly growing availability of competing media renders that virtually impossible. Importantly, there is no evidence that even prior to the existence of the number of competing media that exist today, newspapers ever abused their cross ownership position.

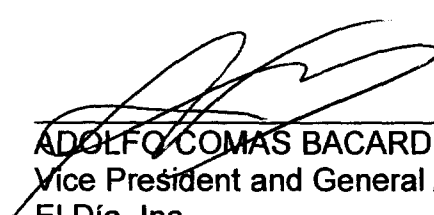
5. The "Emergency Petition" filed by the Newspaper Association of America on

August 23, 1999, is right on point. For the Commission to continue shackling the ability of newspapers to own local broadcast media is unconscionable. There is no reason why the Commission should continue with the restrictions on newspapers which are totally unjustified and as to which the record clearly establishes that to be a fact. The Commission should either suspend the enforcement of Rule 73.3555(c) or declare a general waiver absent extraordinary circumstances where a newspaper wishes to acquire a broadcast property or, in the alternative, where a broadcast property wishes to acquire a daily newspaper. The urgency of these requests is obvious given the fact that the rules adopted by the Commission will go into effect November 16. In taking such action, the Commission need not place out this matter for further rulemaking or further inquiry since it has all the facts at hand.

WHEREFORE THE PREMISES CONSIDERED, it is respectfully requested that the Commission grant forthwith the "Emergency Petition" filed by the Newspaper Association of America.

Respectfully submitted,

November 9, 1999.



ADOLFO COMAS BACARDI
Vice President and General Administrator
El Día, Inc.

c: John F. Sturm
President & Chief Executive Officer
Newspaper Association of America